



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

January 21, 2005

To: The Staffing Industry
From: Department of Revenue
Subject: Tax Reporting Requirements for the Staffing Industry

The Department of Revenue has recently concluded meetings with representatives of the staffing industry. These meetings were aimed at resolving confusion that has existed for some time related to proper reporting of state excise taxes, including collection and reporting of retail sales tax.

As a result of discussions with the industry, the Department has prepared a *Staffing Industry Tax Guide*. The Department has also issued Excise Tax Advisory (ETA) 2016.04.111 (Staffing Companies and Professional Employee Organizations) and ETA 2021.04.24003 (B&O Credit for Research and Development Spending for Staffing Companies) that provides additional clarification for the staffing industry. The guide and advisories are available on our web site at <http://dor.wa.gov>.

You Must Report Under the Proper Business and Occupation Tax Classification

The staffing industry provides workers who perform a variety of services. In the past, most staffing businesses have reported their income under the Service and Other Activities classification of the business and occupation (B&O) tax. The Staffing Industry Guide explains that a staffing business may be taxable under various B&O tax classifications based on the predominate activity of each worker.

For information on identifying the applicable B&O tax classification, examples of classifying income, exemptions, deductions, and specific B&O tax applications, refer to the Staffing Industry Guide available on our web site referenced above. A matrix of laws, rules, and other official references for the staffing industry is also available on our web site. This matrix refers to specific rules and laws for various activities, and provides comments on how the rule or law affects the staffing industry.

All Staffing Businesses are Required to Collect Retail Sales Tax on Retail Services

Beginning July 1, 2005, when a staffing business worker provides retail services, the staffing business will be required to collect retail sales tax on such charges to their retail clients, unless a specific sales tax exemption applies.

Here are some key questions and answers:

1) Q: Can I deduct amounts paid out for payroll and related costs?

A: In most cases, a staffing business has a duty to pay its workers, other than as an agent for the client. Consequently, gross receipts of the business must be reported without deduction for payroll expenses. On December 19, 2002, the Washington Supreme Court decided the case of *City of Tacoma v. The William Rogers Co., Inc.*

The William Rogers case concerned whether payments received by a staffing company from its customers were properly excluded from gross income in calculating B&O tax. The court held the payments were not reimbursements or advances under WAC 458-20-111 and the taxpayer could not exclude them from the measure of the B&O tax. This case clarifies that two conditions must be met in order to exclude payments received from the measure of the tax. The staffing company must first establish that it received the payments as the agent of the customer. If this condition is satisfied, the staffing company must also establish that its use of the funds to pay a third party (the worker) is solely as the agent for the customer. The staffing company can have no liability whatsoever, other than as agent, to pay the worker.

2) Q: If I reported income net of payroll and related costs, will I be liable for additional taxes?

A: If you have reported net of payroll expenses, the Department will not assess additional taxes for these amounts deducted *prior to January 1, 2003*. We refer to this as a limited “look-back” period. If you did not file tax returns, you are liable for unpaid taxes. In this case, the limited look-back period will not apply, and taxes are due based on gross receipts of the business. For registered businesses, the statute of limitations for assessments of additional taxes is generally four years past plus the current year. For unregistered businesses, the Department of Revenue is not limited to this four year period.

3) Q: If I am liable for payment of wages and benefits to workers, but I reported income net of payroll and related costs on or after January 1, 2003 what should I do?

A: You should file amended returns to correctly report your income. For assistance, you may call our toll free Telephone Information Center at 1-800-647-7706.

4) Q: Can I get a refund if I reported gross receipts, including payroll and related costs, prior to January 1, 2003?

A: Charges to your customers to recover your payroll and related costs are properly included as part of your taxable income for B&O tax purposes. The Department cannot refund taxes that were properly due and paid. However, you may be entitled to a refund based on a reclassification from the Service classification to some other classification with a lower tax rate. See the next question.

5) Q: I reported my income, net of payroll expenses, under the Service and Other Activities classification. Can I apply for a refund if I was entitled to report under a lower tax rate?

A: Yes. You may apply for a refund within the statute of limitations, which is four calendar years past, plus the current year. *However*, if you do apply for a refund, you must calculate the actual tax due based on *gross income* and apply the tax rate applicable to the activity of your workers. In other words, even though you originally reported income net of payroll and related costs, any refund must be based on gross receipts, without deduction for payroll costs.

6) Q: If I claim a refund for periods prior to January 1, 2003, based on a reclassification of income from Service to Retailing, will I owe retail sales tax that I did not collect?

A: Again, you may request a refund based on the proper B&O tax classification, but the calculation for the correct amount of tax due must be based on gross income without deduction for payroll and related expenses. As stated above, you will not be required to collect retail sales tax for periods prior to July 1, 2005. If you are owed a refund based on the new classification using gross income as the measure of the tax, you should provide a written explanation for the refund request. Send your letter along with the calculations showing how you arrived at the refund amount due to:

Washington State Department of Revenue
Taxpayer Account Administration
PO Box 47476
Olympia WA 98504-7476

7) Q: Will my customers be forgiven for the amount of unpaid sales tax prior to January 1, 2003?

A: No. The sales tax is imposed on the consumer at the time of sale. Consumers of your services will owe any unpaid tax for all periods within the statute of limitations. Registered businesses who have purchased retail services from you should report under the Use Tax line on their excise tax returns. Others may report on the Use Tax Return for Consumers. This form is available on our web site at <http://dor.wa.gov> (click on "Forms").

8) Q: If I collected and remitted retail sales tax from my customer for retail services provided prior to July 1, 2005, can I apply for a refund?

A: No. Any sales tax collected on taxable retail sales is due under the law and cannot be refunded. The retail sales tax is a tax owed by the consumer and collected by the seller. As stated above, at no time will the consumer be relieved of sales tax properly paid.

If you have any questions, please contact our toll free Telephone Information Center at 1-800-647-7706.